

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE:

CIRCUIT CITY STORES, INC., *et al.*,
Debtors.

Chapter 11

Case No. 08-35653-KRH

Jointly Administered

**BUZZ OATES, LLC'S (SUCCESSOR TO CLAIM NO. 7024 FILED BY
THE MARVIN L. OATES TRUST) RESPONSE TO
LIQUIDATING TRUST'S FORTY-SECOND OMNIBUS
OBJECTION TO LANDLORD CLAIMS [Docket No. 11853]**

Creditor Buzz Oates, LLC, successor to Claim No. 7024 filed by The Marvin L. Oates Trust, ("Oates"), hereby responds to Liquidating Trust's Forty-Second Omnibus Objection to Landlord Claims [Docket No. 11853].

1. On November 10, 2008, Circuit City Stores, Inc. ("Debtor") and its related companies filed voluntary petitions for relief under Chapter 11 of the United State Bankruptcy Code.

2. Debtor leased from Oates that commercial real property located at 2204 Wible Road, Bakersfield, California pursuant to a written lease dated January 18, 1984 and various amendments and assignments, copies of which are attached hereto. Debtor referred to this lease as store #6301.

3. Debtor rejected the lease as of the petition date. Oates relet the premises in mitigation of its damages as of December 1, 2008, but the then-current real estate market had declined, such that the reletting rate was less than that being paid by Debtor.

4. Oates timely filed its Proof of Claim no. 7024 for pre-petition rent and leasehold expenses and rejection damages in the amount of \$44,936.02.

5. On or about April 18, 2012, Oates filed a Transfer of Claim Other than for Security wherein The Marvin L. Oates Trust, as transferor, transferred Claim No. 7024 to Buzz Oates, LLC, as transferee.

6. As set forth in Exhibit B of the Objection, the Liquidating Trustee proposes to reduce Oates' claim to \$19,448.95, eliminating ALL rejection damages and claiming without justification that Oates has failed to mitigate its damages.

7. Oates' Proof of Claim no. 7024 expressly states that Oates did in fact mitigate its entitlement to rejection damages by locating a replacement tenant (MOR Furniture), *albeit* at a reduced rental value. A copy of the replacement tenant lease was attached to the Proof of Claim. Oates located a replacement tenant fairly quickly and sought only the difference between Circuit City's base rent at \$13,641.01 per month and the replacement tenant's rent at \$10,000.00 per month for the remainder of Circuit City's lease term which expired on June 30, 2009. Thus, Oates sought \$3,641.01 for seven months for a total amount of rejection damages of **\$25,487.07**.

8. Additionally, pursuant to the terms of the lease, Oates also sought as damages the pro-rata leasing commission paid for finding of the replacement tenant. Oates paid a leasing commission of \$6,865.38 for a term covering December 1, 2008 through September 30, 2010. Thus, Oates sought 7/22 of \$6,865.38 for a total amount of damages of **\$2,184.44**.

9. Thus, Oates has a total claim for rejections damages of **\$27,671.51**.

10. Liquidating Trustee may contact the following person at Oates regarding its mitigation efforts:

Stacy Santin
Buzz Oates, LLC
960 Fulton Avenue
Sacramento, California 95825
(916) 489-6400

WHEREFORE, Creditor Buzz Oates, LLC requests that the Court determine that this Creditor did in fact mitigate its damages; that its rejections damages are not subject to reduction; that the Objection of the Liquidating Trustee in this regard be denied in its entirety; and, that this Creditor be granted any additional relief to which it may be entitled.

Dated: June 22, 2012

BUZZ OATES, LLC

By: /s/ Augustus C. Epps, Jr.
Augustus C. Epps, Jr.

Augustus C. Epps, Jr., Esquire
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Counsel to Buzz Oates, LLC

CERTIFICATE OF SERVICE

I, Augustus C. Epps, Jr., hereby certify that on the 22nd day of June 2012, a true and correct copy of Buzz Oates, LLC's (Successor to Claim No. 7024 Filed by The Marvin L. Oates Trust) Response to the Liquidating Trust's Forty-Second Omnibus Objection to Landlord Claims [Docket #11851] has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter and emailed separately to the following:

Jeffrey N. Pomerantz, Esquire
Andrew W. Caine, Esquire
Lynn L. Tavenner, Esquire
Paula S. Beran, Esquire

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/s/ Augustus C. Epps, Jr.

Augustus C. Epps, Jr.